

**TITLE 10. DEPARTMENT OF INSURANCE  
STATE OF CALIFORNIA  
45 Fremont Street, 21st Floor  
San Francisco, California 94105**

**NOTICE OF PROPOSED REGULATORY ACTION AND  
NOTICE OF PUBLIC HEARING**

**File No. RH-398**

NOTICE IS HEREBY GIVEN that the Insurance Commissioner proposes adoption of regulations pertaining to the public inspection and publication of examinations. Emergency regulations pertaining to the same subject and containing text identical to the present proposal became effective February 13, 2001, as California Code of Regulations (CCR), Title 10, Subchapter 7.5, Article 2, Section 2695.30, and will expire 120 days from that date.

**AUTHORITY AND REFERENCE**

Authority: Sections 12921, 12926 and 12938(b)(2) of the California Insurance Code.  
Reference: Sections 734.1, 790.03 and 12938 of the California Insurance Code.

**HEARING DATES AND LOCATIONS**

The public hearings will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed regulations at the dates, times, and places set forth below:

<b>Date and time:</b>	<b>Monday, July 2, 2001 10:00 a.m.*</b>
<b>Location:</b>	<b>300 South Spring Street 1<sup>st</sup> Floor Hearing Room Los Angeles, CA 90013</b>
<b>Date and time:</b>	<b>Friday, July 5, 2001 10:00 a.m.*</b>
<b>Location:</b>	<b>45 Fremont Street 22<sup>nd</sup> Floor Hearing Room San Francisco, CA 94105</b>

\*The hearings will continue on the date noted until all testimony has been completed or 4:30 p.m., whichever is earlier. The public hearing rooms are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the agency representative (listed below) for the hearings in order to make special arrangements, if necessary.

## WRITTEN AND/OR ORAL COMMENTS; AGENCY CONTACT PERSONS

All persons are invited to submit written comments to the Insurance Commissioner on the proposed regulations. Comments should be addressed to the following agency representative: Cindy A. Ossias, Senior Staff Counsel, California Department of Insurance, 45 Fremont Street, 21st Floor, San Francisco, CA 94105, Phone: (415) 538-4124, Fax: (415) 904-5490, E-mail: [ossiasc@insurance.ca.gov](mailto:ossiasc@insurance.ca.gov).

All persons are also invited to present both oral and written statements, arguments, or contentions at the scheduled public hearings. The agency may impose reasonable limitations on oral presentations.

All written materials, unless submitted at the hearing, must be received by the Insurance Commissioner at the address listed above no later than 4:30 p.m. on July 5, 2001. Any written materials received after that time will not be considered. Written comments submitted by facsimile or e-mail will be accepted and considered. Comments submitted only by telephone will not be considered.

The following person will act as the backup agency contact person: Jerry L. Whitfield, Assistant Chief Counsel, California Department of Insurance, 45 Fremont Street, 21st Floor, San Francisco, CA 94105, Phone: (415) 538-4231, Fax: (415) 904-5490, E-mail: [whitfieldj@insurance.ca.gov](mailto:whitfieldj@insurance.ca.gov).

## QUESTIONS REGARDING REGULATIONS

The following staff member may be contacted with questions concerning the substance of the proposed regulations: Jerry L. Whitfield, Assistant Chief Counsel, at the above address, phone and fax numbers, and e-mail address.

## PRE-NOTICE PUBLIC DISCUSSIONS

The Department did not involve members of the public in discussions prior to publication of this notice. The proposed regulations involve neither complex proposals nor a large number of proposals that cannot easily be reviewed during the comment period.

## INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

### Existing Law

California Insurance Code, Division 1, Part 2, Chapter 1, Article 4, Section 734.1 (CIC §734.1) sets forth procedures that must be followed by the Department of Insurance relating to reports of examinations of insurers. The section establishes, in pertinent part, requirements and timelines for completion of the examination report; transmission of the report to the insurer for response; the insurer's submissions or rebuttals to the report; and the Commissioner's adoption of the report.

California Insurance Code, Division 3, Chapter 2, Article 1, Section 12938 (CIC §12938) (Senate Bill No. 1805, Chapter 997 (1999-2000 session), Section 2) requires the Department to make various documents available for public inspection, including by publication on its website. The section also provides that, of the documents to be published, the report of market conduct examination must be transmitted to the examined insurer upon its adoption by the Commissioner, that the insurer then has 10 business days

in which to submit comments to the Commissioner relating to the adopted report, and that, within 10 business days after transmittal of the adopted report, the Commissioner publish on the Department's website both the adopted report and any comments received thereto, unless a court of competent jurisdiction has stayed the publication of the report.

The Legislature established the basic requirements for public inspection and publication of market conduct examination reports and comments thereto, entrusting the Insurance Commissioner to interpret and make those requirements specific in order to implement the statute as best he sees fit. CIC §12938(b)(2) requires the Commissioner to provide by regulation the form and length of the insurer's comments relating to the adopted report. This regulatory action is intended to comply with that statutory mandate.

Regulations were adopted on an emergency basis on February 13, 2001, effective the same day. These emergency regulations will expire 120 days from that date. They are located at California Code of Regulations (CCR), Title 10, Subchapter 7.5, Article 2, Section 2695.30.

There are no comparable federal regulations or statutes on the specific problem that the proposal addresses. The proposed regulations do not duplicate or conflict with any federal law.

#### Effect of Proposed Action

The Commissioner proposes the adoption of Title 10, Chapter 5, Subchapter 7.5, Article 2, Section 2695.30 in order to continue to implement, interpret and make specific provisions of California Insurance Code, Section 12938.

Additionally, the Commissioner proposes to rename Subchapter 7.5 (now entitled the "Fair Claims Settlement Practices Regulations") "Unfair or Deceptive Acts or Practices in the Business of Insurance" and to place Sections 2695.1 through 2695.17 in a new Article 1 (of Subchapter 7.5) and name those sections "Fair Claims Settlement Practices Regulations."

The presently proposed regulations will have the effect of complying with the mandate of CIC § 12938 to provide on a permanent basis standards for form and length of the insurer's comments relating to the adopted examination report. They will replace the emergency regulations, which as they now exist set forth standards for form and length identical to this proposed action.

### FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Local Mandate: None.

Cost to any Local Agency or School District for which Government Code Section 17561 Requires Reimbursement: None.

Business Impact: The Department has made an initial determination that adoption of these regulations will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations do not impose a requirement that insurers submit comments in response to adopted examination reports; instead, the regulations simply establish standards for form and length of comments should insurers choose to submit them. The proposed form and length standards neither require insurers

to submit comments of a minimum length nor require a form inconsistent with normal insurer business technology of the late 20<sup>th</sup> and early 21<sup>st</sup> Century.

Cost Impact on Representative Private Person or Business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

Effect on Housing Costs: The Department has made an initial determination that the proposed regulations will not have any affect on housing costs in the State of California.

#### SMALL BUSINESS ASSESSMENT:

The Department has determined that these regulations will not affect small businesses. They will affect only insurance companies, which do not qualify as small businesses pursuant to Government Code Section 11342.610(b)(2).

#### CONSIDERATION OF ALTERNATIVES

The Department must determine that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearings.

#### TEXT OF PROPOSAL / INITIAL STATEMENT OF REASONS

The Department has prepared a separate document entitled "Initial Statement of Reasons," which sets forth the reasons for the proposed regulations and has available all the information upon which the proposal is based.

Copies of the exact language of the proposed regulations, in underline-strikeout format, and of the initial statement of reasons and other information, if any, may be obtained at the hearings or prior to the hearings at no charge upon request from the primary contact person listed above. Please refer to the "RH-398" rulemaking proceeding when contacting that person.

#### AVAILABILITY AND LOCATION OF THE RULEMAKING FILE

The rulemaking file is available for inspection at 45 Fremont Street, 21<sup>st</sup> Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

Any interested person may inspect a copy of the Notice of Proposed Action, the proposed regulations, the Initial Statement of Reasons, the information upon which the

proposal is based and supplemental information contained in the rulemaking file by contacting the contact person listed above. Please make arrangements with the contact person at least 24 hours in advance to view the rulemaking file. Please reference the “RH-398” rulemaking proceeding when contacting the contact person.

#### FINAL STATEMENT OF REASONS

A copy of the final statement of reasons, once it has been prepared, may be obtained from the Department upon request by mail, telephone, fax or e-mail by contacting the agency representative above.

#### MODIFIED LANGUAGE

If the Department amends the proposed regulations with changes that are sufficiently related to the original text, the Department will make the full text of the amended regulations, with the changes clearly indicated, available to the public for at least 15 days before the date the Department adopts the amended regulations.